IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/01/2003

CORAM

THE HON'BLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HON'BLE MR.JUSTICE P.D.DINAKARAN

Criminal Appeal No.623 OF 1998

1.Sheikchand Batcha

2.Sudakar ..... Appellants.

-Vs-

State rep.by
Inspector of Police
Budalur Police Station ..... Respondent.

Appeal against the judgement of the learned Principal Sessions Judge, Thanjavur in S.C.No.37/97 dated 17.2.1998 convicting the appellants under section 302 r/w 34 and 392 r/w 397 r/w 34 IPC.,

For Appellant : Mr.R.Rajaratnam for
Mr.R.Rajan

For Respondent: Mr.A.Navaneethakrishnan
Addl.Public Prosecutor

:J U D G E M E N T

V.S.SIRPURKAR,J.,

The two appellants in this appeal challenge their conviction for the offence under section 302 read with 34 IPC., and section 392 read with 397 read with 34 IPC., and the consequent sentences awarded by the Principal Sessions Judge, Thanjavur.

2. They were tried for the offence on the allegation that they, on 2 4.1.1995, committed the murder of one Venkatarethinam who accompanied them in the lorry during the trip from Ananthapur in Andhra Pradesh to Pattukottai in Tamil Nadu and back.

3. The prosecution story is that the said Venkatarethinam was

working as a commission agent. P.W.6 Meda Ramnath had sent 150 bags of ground-nut seeds valued at Rs.2 lakhs with relevant papers by the lorry which was being driven by Sudhakar (Accused No.2). Sheikchand Batcha (Accused No.1) was the cleaner of the lorry. The prosecution alleged that this lorry alongwith the deceased Venkatarethinam left Pattukottai on 24.1.1995. The ground-nut seeds were sold to P.W.8 Ramanujam. The prosecution further alleged that after the lorry was unloaded at the oil-mill of P.W.8 Ramanujam at Pattukottai at about 8.00pm on 24.1.1995, his son P.W.9 Ravi handed over two lakhs of rupees in cash being the value of the ground-nut seeds to Venkatarethinam in the presence of both the accused persons, which he kept in a suit-case which he was carrying alongwith him in the lorry. Both the accused left Pattukottai in the lorry alongwith Venkatarethinam who was the third passenger in the lorry. The prosecution further alleges that during their return journey, the two accused committed the murder of Venkatarethinam obviously for the money that he was carrying near a village called Pudukudi. The two accused committed this act by assaulting the said Venkatarethinam with Jacki rod and wheel bolt iron pipe on his head and face and smashed the same and took away the two lakhs of rupees kept in the suit-case and also removed Rs.2,000/- kept in his pocket.

4. P.W.1 Kalimuthu who is the Village Administrative Officer of Vendayampatti was informed by P.W.2 Santhanasekar who is his menial at about 8.30pm that a dead body was lying in Pudukudi road which is running south of Thanjavur-Trichy main road at a distance of one furlong from the main road. P.W.1 went to the said place and saw the dead body and he prepared a complaint Ex.P1 and gave the same to Sengipatti Police Station. The police after registering the complaint went to the spot and prepared Ex.P4 observation Mahazar in the presence of P. Ws.1,2&3. P.W.3 was another witness who saw the body and informed P.W.1 about it. The body was also sent for post mortem and as many as 11 injuries were found by the doctor P.W.4 Vijayalakshmi who conducted the post mortem. In the opinion of the doctor the said person had died of the injuries on his face and head. Vicera also was sent for chemical analysis. According to the doctor, the injuries were ante mortem and were cause for the death. Injuries 1 to 7 were found on the head and face and both the head and face found to be crushed.

5. The prosecution alleged that at the time of death Venkatarethinam was working as a clerk under P.W.6 Meda Ramnath and usually went to other states as he was working as lorry commission agent. He left his house at about 5.00 or 6.00pm on 23.1.1995 and thereafter never returned. It was only after 5 days PW6 Meda Ramnath came and enquired about him from his wife P.W.5 Nagalakshmi and it was only on 8.2.1995 she was informed that her husband had died. At the time when Venkatarethinam, left the house he was wearing M.O.6 wrist watch and M.Os.3 to 5 which were the clothes found on the body of Venkatarethinam. She was shown the photographs of her husband and she recognised them to be that of her husband.

6. The prosecution further alleged that the lorry which had left Pattukottai on 24.1.1995 reached back Ananthapur only on 26.1.1995. When P.W.6 Meda Ramnath questioned the accused he was told that Venkatarethinam had not come alongwith them in the lorry and he had stated that he would come by

bus. Since by a previous arrangement Venkatarethinam was to return along with the huge cash of rupees two lakhs P.W.6 Meda Ramnath telephoned P.W.6 Ramanujam on 26.1.1995 itself and he was informed that the goods had reached his oil-mill in Pattukottai and in the same lorry he had sent Rs.2 Lakhs cash alongwith the deceased Venkatarethinam. P.W.6 Meda Ramnath informed the 2ndt accused the driver of the lorry about the information that he had from P.W.8 and asked him to come to Pattukotttai within him. However, since that time the 2nd accused had absconded. P.W.6 himself went to Pattukottai on 28.1.95 evening alongwith the first accused who was the cleaner in the lorry and on the next day he enquired P.W.8 and from which enquiry he was informed that the money was sent alongwith the deceased Venkatarethinam and the said Venkatarethinam alighted the lorry alongwith the case. The said deal was arranged through a broker called S.A. Kafoor. On knowing about all these however P.W.6 Meda Ramnath went back to Ananthapur.

7. On 7.2.95 P.W.10 Lakshmi Narayana Rao who was the Village Administrative Officer of Kalakallah of Ananthapur District, Andhra Pradesh had accompanied the police Sub Inspector of Ananthapur No.2 Town Police Station to Ananthapur-Bellary Bye-pass road also accompanied by one Narashinga Rao who is also a Village Administrative Officer. They saw a person carrying a bag and on suspicion they accosted that person who ultimately turned out to be accused No.1 herein. When the bag was searched, it was found that A1 was having a cash of Rs.10,000/- in the bag. That was recovered by the Sub Inspector of Police in the presence of P.W.10. The accused then stated to have given a confession statement which was recorded in the presence of P.W.10 and Narasinga Rao in which he stated that he had kept Rs.90,000/- more in the house of Muskin Beevi, wife of late Ghouse Mohaideen who is his aunt who is residing near Bodugunda Railway gate in Dharmawaram. The police registered a case and on the basis of the confession statement. Ex.P11 is the admissible portion of the said confession statement. A1 took the police and others to the house of Muskin Beevi and produced Rs.90,0 00/- which was recovered under Ex.P12. The police therefore realising that the offence was committed with the precincts of the limits of Tamil Nadu Police they forwarded the papers alongwith the cash and the statements recorded on the face of the information given by the accused to Sengipatti Police Station.

8. Sengipatti Police Station already registered a case for suspicious death in Crime No.24/95 which was on the basis of Ex.P1 which had been recorded at the instance of P.W.1 who had come to know about the body of the deceased. The police converted that case into that of Section 302 IPC., after the report given by the Ananthapur Police and prepared express first information report and the same was sent to the concerned court. Further Investigation was started on that basis. Statement of the witnesses were recorded by P.W.18 Shanmugham. He came to Ananthapur and took custody of the accused from Judicial Magistrate No.3. He recorded the statements of P.Ws.5 to 7, P.W.10, P.W.16 etc., with the help of P.W.15 who knows Telugu. After conducting the investigation, when he took the accused persons in custody, they agreed to show the place where they had thrown the Jacki rod and wheel bolt iron pipe in a 'karuvelan' bush in front of a small building which was about 25 K.ms. from Thanjavur in Thanjavur-Tichy main road. The Jacki rod

and the wheel bolt iron pipe were produced from the place in pursuance of the confession statement given by the accused persons. The material objets seized in the crime were sent by him for chemical analysis. The report of the chemical analyst is Ex.P21 and Ex.P22 is that of the serologist. During all these time, the 2nd accused Sudhakar was absconding. Only on 12.10.95 on receiving information P.W.18 arrested him at Nellur Bus Stand near Stanley Nagar Chennai at about 8.0 0pm. Charge sheet was presented on the basis of the evidence collected by the Investigation Officer P.W.19 who had also conducted some part of the investigation. On the basis of all these, the matter was committed to Sessions Court.

9. Before the Sessions Court the accused persons denied their guilt. They were therefore tried. The defence was that according to them, the deceased had never accompanied them when they left Pattukottai and that they knew nothing about his being murdered. However they admitted that the deceased Venkatarethinam had accompanied them to Pattukottai from Ananthapur. In short, the accused admitted that the first accused Sheikchand Batcha was the cleaner and the second accused Sudhakar was the driver of the lorry and they had left along with 150 bags of groundnut seeds from Ananthapur for Pattukkottai and that P.W.6 Meda Ramnath had sent the goods to P.W.8 and that the deceased had accompanied them on their journey from Ananthapur to Pattukkottai. The defence did not prevail and the accused came to be convicted by the Sessions Judge on the basis of the circumstantial evidence against them, necessitating this appeal on the part of the accused persons.

10. Learned counsel appearing on behalf of the defence painstakingly took us to the whole evidence and contended that the prosecution had not been able to establish that it was the accused persons who committed the murder. According to the learned counsel the circumstances emerging out of the evidence were too insignificant to connect the accused persons with the offence under Section 302 IPC., Learned counsel also contended that there were a number of missing links in this case and the prosecution was not able to complete the chain of circumstances nor could it prove the individual links so as to raise an irrefutable case and the only inference of the guilt of the accused.

11. On this back drop, in this appeal it has to be examined, as to whether the Sessions Judge was right in convicting the accused persons on the basis of the circumstantial evidence.

12. There can be no dispute that a lorry bearing Registration Number AP-02 /T0999 which is owned by P.W.7 Abdul Wahab was engaged for carrying 150 bags of groundnut seed to Pattukottai and more particularly to P.W.8 Ramanujam who himself is an oil-mill owner. The evidence of P.W.6 Meda Ramnath and P.W.8 Ramanujam coupled with the evidence of P.W.9 Ravi is sufficient for holding that there was such a contract in between P.W.6 Meda Ramnath on one hand and P.W.8 Ramanujam on the other hand. It also cannot be disputed that the the lorry left Ananthapur alongwith the goods and that the deceased Venkatarethinam accompanied the lorry. It is also beyond any doubt

that the lorry was driven by the 2nd accused Sudhakar and the 1st accused Sheikchand Batcha was the cleaner of that lorry and all the three left Ananthapur at about 8.00pm on 23.1.1995 for Pattukottai in that lorry. This will be in our opinion, the first circumstance against the accused persons suggesting that the deceased had accompanied the accused persons to Pattukottai. It had also come in the evidence of P.W.6 Meda Ramnath and P.W.8 Ramanujam that as per the arrangement, the price these 150 bags at about Rs.2 lakhs was to be handed over in cash to the said Venkatarethinam who himself was a lorry agent and was acting on behalf of P.W.6 Meda Ramnath. There is in reality no cross-examination challenging these facts.

13. We have the evidence of P.W.5 Nagalakshmi, the wife of the deceased who also supports the theory that the deceased left with the lorry on 23.1.1995 and that he never returned alive to Ananthapur. The first link in between the deceased and the accused is therefore established beyond any pale of doubt.

14. There was some cross examination on the nature of the business as also on the fact as to whether in reality the amount of Rs.2 Lakhs was given to the deceased Venkatarethinam as was claimed by the prosecution. This was tried to be done by suggesting that Ex.P8 the letter dated 23.1.1996 written by P.W.6 Meda Ramnath to P.W.8 Ramanujam was a fictitious document and was prepared later on. Ex.P9 is the invoice relating to the consignment and it was also tried to be suggested that even this was later on created in order to create evidence that P.W.6 Meda Ramnath had demanded Rs.2 Lakhs as consideration for the consignment and the said amount has been paid by P.W.8 Ramanujam to the deceased Venkatarethinam. It was tried to suggest that the said letters were not given in time to the Magistrate and therefore they were suspicious. It may be that the letters have been sent to the Magistrate later on. However, to say that they were deliberately prepared by the prosecution would be too much. It would attribute unnecessary motivation to the Tamil Nadu Police. It may not be forgotten in this behalf that this was a case in which the police were earlier almost clueless and had to investigate only in respect of the incriminating circumstances as there was no eye-witness available in this case at all. If sometime is taken by the investigating agency in sending Exs.P8 and P9 to the Magistrate, that by itself will not raise a doubt for the simple reason that P.W.6 Meda Ramnath and P.W.8 Ramanujam completely supported the said documents. In so far as P.W.8 Ramanujam is concerned, he could have no interest in the deceased or in the prosecution. There was no reason of both these witnesses to suggest that an amount of Rs.2 Lakhs was handed over to the deceased, unless it was in reality handed over. The defence went to make some absurd suggestion to the effect that Venkatarethinam in fact had returned in the lorry alongwith accused persons. Learned counsel for the appellant tried to suggest that the whole transaction was suspicious in as much as the parties had no reason to pay such a huge cash of Rs.2 Lakhs and it could have been paid easily by issuing a cheque in favour of P.W.6 Meda Ramnath. True it is that a cheque or Demand Draft could have been given. But we cannot forget the fact that the consignment reached at about 8.00pm in a small place like Pattukottai on 24.1.1995. At that time getting a Demand Draft could not have been thought of for the obvious reasons. Since the transaction was to come to an end with the

delivery of the goods from the lorry, the consideration amount was paid at that time itself. There is no cross examination and P.W.8 Ramanujam has very candidly stated that payment has been made in cash. Learned counsel complains that copies of the accounts regarding the payment of Rs.2 Lakhs or receipts for such payment were not produced. In our opinion. that could be of no consequence once both the receiver of the amount and the sender of the amount have been examined in person and had supported the transaction. The version of P.W.8 Ramanujam is also supported by P.W.9 Ravi who has delivered the cash of Rs.2 Lakhs at the directions of his father P.W.8 Ramanujam to the deceased Venkatarethinam. P.W.9 Ravi had very specifically stated in his evidence that the goods were received through broker Kapoor and that on 24.1.1996 they received 150 bags of groundnut seeds from P.W.6 Meda Ramnath for their oil mill at Pattukottai. He gave the amount of Rs.2 Lakhs to Venkatarethinam and in his presence Venkatarethinam put that amount in the suit case in the presence of the accused persons. There is nothing to disbelieve the claim made by this witness as he is wholly disinterested. There is nothing in his cross examination and he was merely asked whether the amount was withdrawn from the bank and whether it was reflected in the accounts. He asserted that he had the said accounts. He also claimed that the day books of the business were checked by the police but not seized. There is in reality no challenge to the theory that Venkatarethinam after he was handed over the amount proceeded in the said lorry. That apart, this assertion has remained completely unassailed. It is the case of the accused also that they left Pattukottai for Ananthapur immediately after unloading the consignment at the mills of P.W.8 Ramanujam. Both the witnesses P.W.8 and P.W.9 had no reason whatsoever to go to the extent of preparation of false records like Exs.P8 & Ex.P9 and to falsely claim that Rs.2 Lakhs were paid by them to the deceased Venkatarethinam. This is all the more obtained on the basis of an accepted position that 150 bags of ground nut seed were actually despatched from Ananthapur by P.W.6 Meda Ramnath in favour of P.W.8 Ramanujam. This therefore would turn out to be a second circumstance, viz., the deceased Venkatarethinam reached Pattukottai alive and while leaving Pattkottai he was in possession of rupees two lakhs in cash so as to provide a motive for some one to commit his murder.

15. The third circumstance which emerges out is that he was actually seen by P.W.9 Ravi boarding the lorry alongwith the accused persons. It is obvious that thereafter the deceased Venkatarethinam was never seen alive by anybody and it was only on the morning of 25.1.1995 his dead body alone came to be seen in the vicinity of Pattukottai. It is also obvious that P.W.9 Ravi therefore was the witness who had last seen the deceased Venkatarethinam in the company of the accused persons and all the three were together left Pattukottai in the lorry. The circumstance of last seen together is therefore a most vital circumstance.

16. When we consider the fact that the body of the deceased was found about 25 Kms away from Pattukottai not at the road in between Pattukottai to Ananthapur, but somewhat away from the main road, it is obvious that Venkatarethinam lost his life in the night between 24.1.95 and 25.1.95. In this behalf, the evidence of the doctor P.W.4 Vijayalakshmi is also worth noting. The said doctor conducted the postmortem on 26.1.1995 at about

12.45pm when the body reached her. She has given the opinion that the deceased would have died due to the crush injury on the head and face. When we go through the evidence of P.W.1 Kalimuthu, the Village Administrative Officer and that of P.W.2 Santhanasekar P.W.1's menial it becomes clear that the the body was found on 25.1.1995 and ultimately that body turned out to be that of Venkatarethinam and so far as the corpus delicti is concerned there is no dispute that the body belonged to Venkatarethinam. We have the evidence of P.W.5 Nagalakshmi who identified not only the photograph of the dead body but also from the clothes and the watch which were found on the dead body. In fact there is very little or any challenge to the fact that the body which was found is that belonged to that of Venkatarethinam the husband of P.W.5 Nagalakshmi. The circumstance which is then established by way of the next circumstance is that after leaving Pattukottai in the company of the accused persons, the dead body of the deceased Venkatarethinam was found in the early morning of 25 .1.1995 and thus Venkatarethinam lost his life somewhere in the night in between 24/1/1995 and 25/1/1995. It is established as an adverse circumstance by way of incriminating circumstance that after Venkatarethinam left Pattukottai with the money, he was never seen alive and his body alone was found in the early morning of 25.1.1995. The fact that report of the body was given by P.W.1 Kalimuthu almost immediately after coming to know about the same from P.W.2 Santhanasekar shows that Venkatarethinam could not have been alive at the day-break of 25.1.1995. Therefore, it is established that the deceased person Venkatarethinam who left Pattukottai in the night of 24.1.95 and was carrying cash amount of Rs.2 Lakhs alongwith both the accused persons, was found dead at the end of that night within about 25 to 30 K. Ms from Pattukottai when he was scheduled to go to Ananthapur and that his body was found on the same road leading to Ananthapur from Pattukottai though a little away from the main road.

17. It also cannot be disputed on the basis of the injuries suffered by Venkatarethinam that Venkatarethinam did not die in a natural death, but a homicidal death. It was tied to be suggested by the learned counsel at this juncture that Venkatarethinam could have also been met an accidental death and might have been a case of hit and run because his face and head which were found to be injured and the injuries could be attributed to his being run however by a vehicle. This theory was tried to be propounded by the learned counsel on the basis of an unguarded admission given by the Investigating Officer that the body looked as if it was involved in an accident. Such cannot be the case, for the simple reason that in that case the body would have been found right on the main road. The fact that the body was found about a furlong away from the main road rules out the possibility of this being a mere hit and run case. Even if we presume for the sake of argument that it is a hit and run case, there is no reason why Venkatarethinam should be about 25 to 30 K.Ms. away from Pattukottai to Ananthapur road. It is deposed that the deceased had depressed fractures on his face and head and even the doctor had pointed out that the injuries are attributable to his being hit by the weapons like Jackie rod and wheel bolt iron pipe which were shown to the doctor. In her evidence she has clearly deposed that the injuries were possible by repeated attacks by M.O.1& M.O.2. This claim has not been questioned in the cross examination of the doctor at all. The homicidal death of Venkatarethinam would therefore be the next circumstance.

18. Further it was submitted by the learned counsel for the defence that M.O.1 & M.O.2 could not have been used in the assault took place because as per the serologist's report, there was no human blood found on those material objects. In that behalf, we will have to take into account the fact that while this heinous crime took place in the night of 24.1.1995, these material objects were found only on 1.3.199 5 and as such there was a time gap of more than one month. The place where these M.Os were thrown away, was agreed to be discovered by the accused on 1.3.1995 only. Ultimately the weapons sent only on 29.3.1 995 for chemical analysis, which would be beyond two months from the time they are actually purported to have been used. As regards this discovery, it was pointed out by the learned counsel for the defence that P.W.1 Kalimuthu and P.W.2 Santhanasekar wh o acted as the punchers had turned hostile and as such their evidence cannot be believed and thus, the so called discovery of these weapons would be of no consequence. It is trite law now that merely because the witnesses turned hostile, their evidence cannot be thrown off altogether if there is some part of the evidence which can be believed. During the course of cross examination P.W.1 had admitted that he had signed Ex.P2 Mahazar and Ex.P3 seizure mahazar though he claimed that he did not remember whether the first accused has given a voluntary statement to the Inspector of Police on 1.3.1995 at about 3.00pm. P.W.2 also admitted in his cross examination that he had stated before the police regarding the readiness on the part of the first accused to produce M. Os 1&2 from Veli Karuvai bush near Pudukudi check-post and that in pursuance of that, he took the police party to the spot from where these M.Os were actually recovered. The statements cannot be used but this is apart from the evidence of P.W.18 the Investigation Officer who after taking the first accused in his custody questioned him in the presence of P.Ws.1&2 and the accused then agreed to discover the place where they had thrown the jackie rod and the wheel bolt iron pipe behind the small building in Tanjavur-Trichy main road. This statement was alleged to have been given in Telugu which was translated by P.W.15 Ayyalu Grade-I Police Constable and recorded by P.W.18 who had made an endorsement to that effect in Ex.P19. In pursuance of this when the police party was taken to the place by the first accused, the material objects 1&2 were actually recovered at about 5.45pm on 1.3.1995. There has been practically no cross examination of this witness as regards this aspect. It was only on 1.3.1995 that the Investigating Officer P.W.18 had the police custody of the first accused. Immediately on his getting police custody, the accused agreed to discover the place where they had thrown away the jackie rod and the wheel bolt iron pipe. It was stated that when the custody was already with P.W.19 from 19.2.1995 itself, the belated statement on 1.3.1995 would be of no consequence. The fact remains that since the custody was obtained from Andhra Police, substantial time might have been taken in going to Judicial Magistrate No.3, Thanjavur which took up time upto 20.2.199 5 and thereafter, the accused were sent to judicial custody and only on 1.3.1995, the Investigating Officer obtained police custody. Therefore, the argument that the revelation was a belated exercise cannot be accepted. Now, M.Os.1&2 are not ordinary articles and they are used only for the running of a lorry and more particularly for changing the tyres etc., The knowledge on the part of the accused as to the place where these articles would be lying thus becomes all the more important in providing an additional link for the participation of the first accused in the crime. Thus, a further

incriminating circumstance is successfully proved by the prosecution suggesting that A1 knew the place where the jackie rod and the wheel bolt iron pipe were thrown in the night of 24.1.1995. Ordinarily there was no reason for the accused persons to throw away these articles which are extremely necessary articles to run the lorry and it is claimed that the lorries do not ply unless they are equipped with jackie rod and wheel bolt iron pipe, which are necessary and useful in removing and changing the tyres. If the accused throw away the jackie rod and the wheel bolt iron pipe from the lorry itself and discovered the same, that by itself becomes a very valuable circumstance against them. Because, unless these articles were incriminating articles, the accused would not have chosen to throw them away. The place where these articles were thrown is not very far from the spot where the body was found. The place from where the material objects were recovered is on the road from Thanjavur to Ananthapurt itself. In our opinion, the learned Sessions Judge was right in accepting the circumstance of discovery of M.Os. 1&2 as against the accused persons. The Sessions Judge is also right in accepting this as one of the incriminating circumstance.

19. From this we will have to come to the another circumstance relied on by the prosecution. That circumstance is the arrest of the first accused and the seizure of Rs.10,000/- of cash in the bag M.O.16 which he was carrying. It is the evidence of P.W.16 Ranga Naidu, Sub Inspector of Crime Branch Police in Ananthapur that while he was on duty in the concerned police station he received certain information on 7.2.1995 and on the basis of the said information, he summoned P.W.1 0 Lakshminarayana Rao, Village Administrative Officer of Kalakallah and one Narasinga Rao and came to the Ananthapur-Bellary Bye-pass road and at that time they found A1 was standing in the road with a cotton bag on his shoulder and on seeing the police party , he started running and he was surrounded and arrested. During the search, it was found that there was a sum of Rs.10,000/- in the shoulder bag. He could not explain the possession of such a huge amount of Rs.10,000/- and ultimately on his being asked, he gave a confession statement that he kept a sum of Rs.90,000/-with his aunt in her house at Dharmawaram and that he would produce the same, if he is taken there. The seizure of Rs.10,000/- is proved by P.W.10 Lakshminarayana Rao, Village Administrative Officer who acted as mahazar witness for Ex.P11 evidencing the seizure of Rs.10,000/-. The information regarding Rs.90,000/- was recorded in Ex.P10. This statement is also proved by P.W.10 Lakshminarayana Rao and Narasingarao. On the basis of this, a case was registered against the first accused under Sections 41 and 102 IPC., in Crime No.49/95. FIR was prepared under Ex.P15 and the same was sent to the Magistrate and the copies of the same to the police higher officials. On the next day, the police party took the first accused to Dharmawaram alongwith the witnesses P.W.10 and Narasingarao on the basis of his confession statement, to his aunt's house. The first accused went inside the house and brought one plastic bag and handed over the same to the police party in which cash of Rs.90,000/- was kept which amount was seized. The M.O. was sent to the court. In fact, this was the starting point where the police came to know about the murder of Venkatarethinam. This discovery is of utmost importance. It was on this basis that the police of Ananthapur came to know that the incident was taken place in Sengipatti and therefore information was transmitted to the concerned police station on 8.2.1995 itself. The evidence

of P.W.16 goes to suggest that when the material object like cash of Rs.10,000/- was tried to be handed over to the court at Ananthapur, the court directed to keep the amount with the police and then to transmit the same to the concerned court having jurisdiction. There was some cross examination to the Investigation Officer. All that was suggested in the cross examination of this and P.W.10 has not really yielded any result. A blank suggestion was made that Exs.P10, P15, P1 1 and P12 were not prepared by him and he had not recovered the money, which the witnesses denied. It is very strange that that the first accused in his examination has denied that Rs.10,000/- was recovered from him from the spot. But he does accept that Rs.10,000/- was seized from his house. Thus, the accused claims the ownership of the said amount but for which no explanation was given in his examination under Sec.313. Considering that the first accused was merely a cleaner, the seizure ofRs.10,000/- from his house becomes a very suspicious circumstance.

20. The defence counsel argued that P.W.10 Lakshminarayana Rao who is Village Administrative Officer of Kalakallah village of Ananthapur District was only a stock witness and that his presence at the time of arrest was utterly suspicious. Learned counsel argued that till that time there was no suspicion against the first accused and that therefore, it is difficult that his movements were under the surveillance of the police. Learned counsel pointed out that in fact it is in the evidence of P.W.6 Meda Ramnath that he had taken the first accused to Pattukottai along with him and at that time when he reached Pattukottai and conversed with P.Ws.8&9 during which time he wanted to collect information about his agent Venkatarethinam, the first accused was throughout there. Learned counsel even points out that however the presence of the first accused is not deposed to by P.W.8 Ramanujam or P.W.9 Ravi in their evidence which suggests that the claim of witness P.W.6 Meda Ramnath of having taken the first accused to Pattukotttai alongwith him was false. Learned counsel argues that after P.W.6 Meda Ramnath came to know about the disappearance of his agent Venkatarethinam alongwith cash of Rs.2 Lakhs it is strange that no police report was made either before the Pattukottai Police or before the Ananthapur Police. Learned counsel argues that the disappearance of his agent should have raised a doubt in the mind of P.W.6 and he should have activated the police to investigate the case, when he came to know that Venkatarethinam had left with the first accused in the lorry and at that time he was carrying two lakhs of rupees. This argument is not totally without substance. It is really strange that P.W.6 Meda Ramnath did not make any move either against the first accused or the deceased Venkatarethinam though the said persons were having cash of rupees two lakhs belonging to him. However, that could not bring the whole story under cloud. Whether the first accused was present at the time when P.W.6 Meda Ramnath confronted with P.W.8 Ramanujam and P.W.9 Ravi would entirely go in back drop, once within few days thereafter the first accused was caught with Rs.10,000/-. The claim of the first accused that he was arrested only from his house at Ananthapur by the police and they seized Rs.10,000/- only from his house cannot be accepted for the simple reason that the source of the above said Rs.10 ,000/- has not been explained by him. This is apart from the fact that P.W.10 Lakshmi Narayana Rao Village Administrative Officer and P.W.16 Renga Naidu, Sub Inspector of Police have positively established the recovery of Rs.10,000/- and the arrest of the first accused at Bellary Bye-pass road. We

have critically examined the evidence of P.Ws1 0&16. But there is no cross examination of these witnesses. Learned counsel pointed out that while according to P.W.16 Sub Inspector of Police, the money was produced from the bag which was carried by the accused, according to P.W.10 Lakshminarayana Rao, Village Administrative Officer the said amount was in his pocket. We do not think that such a discrepancy would discredit the evidence of P.W.10 and that could be due to the limited observation power of the witness. But the fact that Rs.10,000/- was recovered from the first accused is not disputed by the first accused himself, excepting that the first accused disputed the place from where the said amount of Rs.10,000/- was recovered. This is apart from the fact that the first accused has not given any explanation even for the said cash amount of Rs.10,000-. We have therefore, no doubt about the evidence of P.Ws.10&16 and the learned Sessions Judge is right in accepting this evidence. There may be some confusion about the presence of the first accused alongwith P.W.6 Meda Ramnath when he went on 26.1.1995 or 27.1.1995 to Pattukottai. But, that itself does not in any way minimise the importance of the arrest of the first accused on 7.2.1995 at Ananthapur or the recovery of Rs.10,000/- from him. The reasons for not giving report to Police on the part of P.W.6 could be that he was still hopeful of getting his amount from the agent who was a person of his confidence. This is apart from the fact that no explanation was asked from him for his not giving report to Police. On the day when the meeting took place between P.W.6 Meda Ramnath and P.Ws.8&9, it was not even imagined that Venkatarethinam had already lost his life. In fact his fate was not known to Ananthapur circles at all. The finding of the body was not by the police of Pattukottai or Ananthapur. Considering the distance between Ananthapur and Pattukottai which is about 500 Kms, it cannot be said that the action of P.W.6 Meda Ramnath in not reporting against the first accused was in any manner unnatural. Apart from that we will have to take into consideration the fact that even till that time, the part played by both these accused persons was not revealed and till that time the needle of suspension could have been only against the deceased Venkatarethinam himself who was suspected to have decamped with two lakhs of rupees of his employer. There is a reference in the evidence of P.W.18 Investigation Officer that some complaint was made by P.W.6 Meda Ramnath. However, that does not appear to have any substance. On that basis the learned counsel tried to suggest that this would bring into suspicion the whole investigation. We do not think so. Because, it was not put to the witness P.W.6 Meda Ramnath at all. Be that as it may, we have stated about the recovery of a sum of Rupees One Lakh from the first accused and the source of which remained unexplained would raise a very strong circumstance against the first accused. We therefore hold that the prosecution is able to establish substantial circumstance against the accused persons by proving that A1 was in possession of rupees One Lakh after the crime and for that there is no explanation for possession of such a huge amount. In this behalf the learned counsel pointed out that this could be a stage managed affair. We do not think so. Because in that case the Investigating Officer could have to arrange for one lakh of rupees for being seized and we do not think that any Investigating Officer could stealthily arrange rupees one lakh to show the same to be recovered from the accused.

21. Learned counsel for the defence further urged that the recovery of Rs.1,00,000/- should not be viewed as a circumstance against the

second accused. He also alleged that even the discovery of M.O.1 Jackie Rod and M.O.2 Wheel Bolt Steel Pipe was done by the first accused and as such that also cannot be a circumstance against the second accused, who was alleged to be the driver of the said lorry. The gravamen of the contention raised was that the discovery of the money and the discovery regarding the weapons allegedly involved in the offence could not be linked with the second accused and in reality, there was no incriminating circumstance available against the second accused and he was liable to be given the benefit of doubt. Learned counsel also very severely criticised the non-examination of the lorry to find out as to whether there were any bloodstains, etc. and contended that the investigation in this case was slipshod. He pointed out that the circumstance under which the first accused was apprehended was itself suspicious and that there was really nothing against the second accused.

22. We shall take stock of the argument in so far as the second accused is concerned first before considering the other contentions raised. It will have to be remembered that the second accused was admittedly the driver of the lorry and was in the employment of the lorry-owner, P.W.7 Abdul Wahab. There is also no dispute that he was the one who drove the lorry from Ananthapur to Pattukottai and again he was the driver who drove the lorry back to Ananthapur, which reached Ananthapur on 26-1-1995. It cannot be, therefore, imagined that the second accused was not aware of what transpired between the nights of 2 4th and 25th January, 1995. We have already held that the prosecution had established successfully that the deceased Venkatarathinam on that fateful night travelled in the lorry along with the accused 1 and 2. Once this position is clear then, the second accused cannot be absolved of his own responsibility. It was tried to be suggested that nothing was recovered from the second accused and that the murder could have been committed even the first accused alone. We do not agree with this extreme argument. In this behalf, the most important aspect that will have to be considered is the studied silence on the part of the second accused in respect of the existence of the death of Venkatarathinam during that fateful night. He all through kept quiet. Even if he had no courage to stop the first accused from committing the murder, he could have later on reported the matter to the police or at least to his employer. That has not been done by him. Instead, he made himself scarce. It has come in the evidence of P.W.7 Abdul Wahab that P.W.6 Meda Ramnath enquired about his clerk Venkatarathinam and that time, he directed P.W.6 Meda Ramnath to enquire from the driver and cleaner of the lorry. It has come in the evidence of P. W.6 Meda Ramnath that on 27-1-1995 he asked about Venkatarathinam to the second accused and that he also requested the second accused to accompany him to Pattukottai and from that time, the second accused made himself scarce. Ultimately he claims that he took the first accused along with him to Pattukottai. It is significant enough to note that though there was a positive meeting between P.W.6 Meda Ramnath and the second accused, the second accused has chosen to remain silent. On the other hand, contrary to the request made by P.W.6 Meda Ramnath to accompany him to Pattukottai, the second accused has absconded. This assertion on the part of P.W.6 Meda Ramnath has not been challenged at all. The second accused has also obviously kept silent in respect of Venkatarathinam and has not chosen to inform about him to his employer P.W.7 Abdul Wahab. On the backdrop of this silence, when it turns out that the

second accused absconded completely and could be arrested only on 13-10-1995 and that too at Chennai, which is far away from Pattukottai, though the second accused has denied this and though a suggestion has been put to P.W.18 Shanmugam that this was a fake arrest, we do not think that the claim of P.W.18 Shanmugam of having arrested the second accused only on 13-10-1995 can be disputed. Not only this, a specific question was put to the second accused that on the request having been made by P.W.6 Meda Ramnath to him to accompany him to Pattukottai and from that day, the second accused absconded altogether, the second accused had no explanation excepting a blank denial. All that the second accused had to say in answer to the question regarding his arrest at Chennai on 13-10-1995 was that he was in fact picked up from his house at Ananthapur. There is nothing on record to suggest this. On the other hand, the evidence suggests otherwise. Thus, the fact is established that the second accused not only kept quiet even after being questioned by P.W.6 Meda Ramnath but he also absconded altogether only to be found after about nine months of the incident. This circumstance of his studied silence and the abscondance for a period of about nine months is a very strong circumstance against him. It, therefore, cannot be said that the second accused had no hand in the dastardly crime attributed to the accused persons or that he was a mute spectator to whatever happened during that fateful night.

23. This brings us to the other argument regarding the defects in the investigation which had been pointed out by the learned counsel. It is true that the lorry was not examined or at least there is nothing on record to suggest that it was so examined. It would have been undoubtedly better had the lorry been examined with the aid of experts. However, the fact remains that the lorry came to be seized only on 19-2-1995. In fact, the murder of Venkatarathinam itself came to light on or about 7-2-1995. Till then there was every possibility of Venkatarathinam having decamped with the money because nobody has even come to know about the identity of the body of Venkatarathinam found on 25-1-1995. It is also not known as to whether the lorry was immediately available for being seized. Therefore, we do not think that a very serious lapse has been found by not seizing the lorry earlier. At any rate, the non-examination of the lorry is pushed to the background in the wake of a positive circumstance established that on that night Venkatarathinam was travelling with the accused persons in the lorry and that he was found dead at the daybreak and that he died a homicidal death due to the injuries suffered by him, which injuries were possible by the weapons ultimately found. In our opinion, therefore, the non-examination of the lorry on 19-2-1995 when it was seized really relegates to the backstage in the wake of the other voluminous evidence available. Therefore, the further contention that the discovery of the cash and the discovery of the weapons cannot be linked with the second accused is also incorrect because all through accused 1 and 2 were together and nothing has been shown that they parted their ways. By necessary implication, it will have to be held that everything took place in the presence of the second accused. True it is that the police have not been able to trace out the cash allegedly distributed from this accused. However, that by itself cannot absolve this accused of the offence of murder which has been proved. Abscondance on the part of the second accused for nine months speaks volumes against him. His studied silence only adds grave colour to his abscondance.

The Sessions Judge has also accepted the evidence of P.W.18 Shanmugam in respect of the arrest of this accused and we agree with the conclusion reached by the Sessions Judge.

24. Much was said by the learned counsel that there was no satisfactory record of this lorry having crossed the check-post while returning from Ananthapur though there was a record of its having crossed the check-post while proceeding from Ananthapur to Pattukottai. This, in our opinion, is most insignificant circumstance. If it at all it can be so viewed much less helping the accused persons, once it is a proved fact that the lorry ultimately reached Ananthapur on 26th January, 1995 itself without Venkatarathinam in it, such argument becomes meaningless. Perhaps this point was argued by the learned counsel with an idea to show that the accused persons never passed the route near which the dead body was found. There is a studied silence on the part of the accused to show that there is any other route available from Pattukottai to reach Ananthapur by which the said check-post could be avoided and that the lorry did take such other course. In the absence of any such suggestion, the mere fact that there was no entry on the check-post of the lorry crossing the check-post while returning to Ananthapur becomes futile. This brings us to our last task of culling out the various incriminating circumstances proved, which we have earlier discussed.

25. The various circumstances proved against the accused to connect them with the crime are as follows:

(1) That there was an agreement between P.W.6 Meda Ramnath and P.W.8 Ramanujam that P.W.6 Meda Ramnath would send 150 bags of groundnut seeds to P.W.8 Ramanujam's oil-mill at Pattukottai and that he would send his agent Venkatarathinam along with the consignment in the lorry and that the value of the goods of Rs.2,00,000/- was to be paid in cash to the agent on delivery of the goods;
(2) that the consignment of 150 bags of roundnut seeds was sent through the lorry, bearing Regn. No.AP-02-T-0999, owned by P.W.7 Abdul Wahab and that the first accused was the cleaner while the second accused was the driver of the said truck;
(3) that the lorry left Ananthapur on 23-1-1995 between 8.30 and 9.00 p.m. with the deceased Venkatarathinam accompanying the first and second accused along with the load of 150 bags of groundnut seeds;
(4) that the lorry which had reached Pattukottai on 24-1-1995 at the oil-mill of P.W.8 Ramanujam delivered the load at P.W.8 Ramanujam's oil-mill and the Venkatarathinam, who was alive then, was to receive Rs.2,00,000/- from P.W.8 Ramanujam towards the value of the 150 bags of groundnut seeds;
(5) that Venkatarathinam was paid Rs.2,00,000/- in cash in the presence of accused 1 and 2 and the lorry left Pattukottai oil-mill in the same night of 24-1-1995 with Venkatarathinam who was then never seen alive by anybody;
(6) that the dead body of Venkatarathinam was found in the early hours of 25-1-1995 in the vicinity of Pattukottai at a place which a furlong away from Pattukottai-Ananthapur Highway. Thus, Venkatarathinam lost his life during the night between 24th/25th January, 1995;
(7) that the deceased Venkatarathinam had suffered a homicidal death due to the assault by the blunt weapons like M.O.1 Jackie Road and M.O.2 Steel Pipe;

(8) that the said M.O.1 and M.O.2 were later on recovered on the basis of the confession statement given by the first accused on 1-3-1995 from or near about a place where the dead body of Venkatarathinam was found;
(9) that the first accused was arrested on 7-2-1995 and at that time he had Rs.10,000/- cash in the bag (M.O.16) which was carried by him;

(10) that the first accused thereafter agreed to discover Rs.90,000/- which he had kept with his aunt saying at Dharmavaram and in pursuance of the said statement, he actually delivered Rs.90,000/-;
(11) that there is no explanation for both these amounts from the first accused, who was merely a cleaner, and thus ordinarily he could not have had large amounts like Rs.10,000/- and Rs.90,000/'- in his possession in cash;
(12) that on reaching back Ananthapur on 26-1-1995 both the accused kept silent and the first accused actually informed P.W.6 Meda Ramnath that Venkatarathinam was to follow later on by bus;
(13) that on a query put by P.W.6 Meda Ramnath to the second accused and on a request made by him to accompany him to Pattukottai, the second accused absconded and was only found ultimately on 13-10-1995 that too at Chennai, which would be about 400 k.m. away from Pattukottai;
(14) that even when the first accused accompanied P.W.6 Meda Ramnath to Pattukottai, all through he kept silent even in the wake of the assertion on the part of P.W.8 Ramanujam and P.W.9 Ravi that Venkatarathinam after receipt of Rs.2,00,000/- in cash had accompanied both the accused in the same truck on 25-1-1995 to Ananthapur;
(15) that accused 1 and 2, in whose exclusive company Venkatarathinam was, had the motive and the opportunity to commit the murder of Venkatarathinam as there was nobody else in the lorry besides the said two accused.
From these circumstances, the only inference which can be drawn is that of the culpability on the part of the first and second accused in so far as the death of Venkatarathinam is concerned. The prosecution has been successful in establishing that there was ample opportunity to the accused persons and the accused persons alone to commit the crime. They had also the necessary motive for committing the crime, i.e. looting Venkatarathinam. Under the circumstances, we have already considered the effect of each and every individual circumstance that we have held as proved. The circumstances are specific and of a clinching nature and all of them irresistibly lead to the conclusion that the accused 1 and 2 alone were guilty of committing the murder of Venkatarathinam. All the circumstances which have been conclusively established are consistent only with the hypothesis of the guilt of the accused persons and are totally inconsistent with their innocence. In our opinion, the chain of circumstances is complete by proof of every link thereof and the whole chain points out only to the guilt of the accused persons. We have already shown that the offence could not have been committed by the first accused alone. We have, therefore, no hesitation to uphold the judgment of the trial court holding both the accused persons guilty of the offence under Sec.302 and 392 read with 397 I.P.C.

26. Before parting with the judgment, we must mention that the learned Sessions Judge should have culled out each and every incriminating circumstance separately. He has not done it, making his judgment loose and, therefore, we have to do the task of culling out the circumstances separately

and considering each of them. We put on record and appreciate the efforts of Mr. R. Rajaratnam, learned defence counsel as also Mr. Navaneethakrishnan, learned Public Prosecutor, who have very fairly put all the materials before us.

27. In the result, the appeal, which has no merits, is dismissed.

Index:Yes

Website:Yes
MP/Jai

To:

1. The District Collector, Thanjavur
2. The Superintendent of Police, Thanjavur
3. The Director General of Police, Chennai
4. The Public Prosecutor, High Court, Chennai
5. The Superintendent of Central Prison, Central Prison, Tiruchy